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CROMPTON, SEAGER & TUFTE, LLC			EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/713,820
Filing Date: November 14, 2003
Appellant(s): DAVISON ET AL.

**MAILED
FEB 05 2008
GROUP 3700**

THOMAS W. DAVISON et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 18, 2007 appealing from the Office action mailed May 01, 2007.

1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interference which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed

The appellant's statement of the issues in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,044,461

Murdock

07-1962

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44,45,47-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Murdock (U.S. 3,044,461). Murdock discloses in figure 1, a device for providing access to a surgical location within a patient, including: an elongate body has a proximal end 12, a distal end 13 and defines a length between the proximal and distal ends such that the proximal end can be positioned outside the patient and the distal end can be positioned inside the patient adjacent the body cavity, and where an arcuate guide 40 (element 40 is known as a cam ring) which is inherently having an elongate length along a portion of the elongated body that is able to move from its contracted condition to its expanded condition(at best seen in figures 4-5). As to claim 50, Murdock discloses in fig. 5, a surgical device for providing access within a patient body, including a guiding mechanism(the examiner interprets a guiding mechanism which is the same as the arcuate guide 40) comprising a curved elongated portion at 41 which is able to extend in a transverse direction along the elongate body which is moveable from its contracted condition to its expanded condition, where a passage extends through the elongate body between the proximal and distal end sized such that other surgical instrument (obturator, see fig. 13) can be positioned within the passage, where the elongate body is actuatable between a first configuration which is inserted into a patient and a second expanded configuration (see col. 4, lines 9-15), where the

first location is distal to the second location, and where the elongate body comprises a metallic material (see col. 3, lines 19,20 and 59-65).

Allowable Subject Matter

Claim 46 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Claims 44-45 and 47-57

Applicant argues that Murdock does not teach the invention as recited in claim 44, in part, "an arcuate guide having an elongate length, a first end and a second end along which a portion of the elongate body is moveable from its contracted condition to its expanded condition, the arcuate guide extending generally in the direction of expansion between the contracted and expanded conditions." The examiner, respectfully, disagrees. Actually, the examiner relied upon figs. 4-5 of Murdock, element 40 as an arcuate guide as claimed because the arcuate guide is not further defined. Because there is no further description of the arcuate guide, the examiner considers element 40 is equivalent to the arcuate guide. The examiner also considers the elongate length would be the whole segment from the left to the right dimension of element 40. The first and second ends would locate from the left and right edges in the above figures, 4-5. Thus, element 40 does have an elongate length with the first and the second end along which a portion of the elongate body that is moveable from its contracted condition to its expanded condition.

The appellant argues that the Murdock fails to teach "a guiding mechanism comprising a curved elongate portion extending in a generally transverse direction along which a portion of the elongate body is moveable from its contracted condition to its expanded condition."

Actually, the examiner relied upon figs . 4-5 of Murdock which discloses a guiding mechanism which is the same with the arcuate guide surface 40 comprising a curved elongate portion at 41 that extends in a transverse direction along which a portion of the elongate body. For-example, the portion of 40 does appear to have a length with a first end and a second end along the portion of the elongate body, when a force applies toward the distal end of the instrument, element 40 will move from one end to the other end which would cause the elongate member to expand and contract in a transverse direction as best described in fig. 5.

(11) Related Proceeding Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Victor Nguyen



Examiner

Art Unit 3734

VN ✓

January 28, 2008

Application/Control Number:
10/713,820
Art Unit: 3734

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